

Notice of Allowability

Application No.

10/627,065

Examiner

Annette R. Reimers

Applicant(s)

PAUL, KAMALJIT S.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to correspondence filed on 10/06/06 and telephone conversation of 12/20/06.
2. ☒ The allowed claim(s) is/are 61-144.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>See Continuation Sheet</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER

Continuation of Attachment(s) 3. Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date: 09/06/06, 09/07/06, 09/13/06 .

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Thomas Wilhelm, applicant's representative, on Wednesday, December 20, 2006.

The application has been amended as follows:

In the claims:

In claim 85, line 9, delete -- and -- after "aperture body."

In claim 85, line 11, add -- and -- after "spinal plate."

In claim 85, line 24, change "a channel" to -- the channel --.

Election/Restrictions

Claim 85-90, previously withdrawn from consideration as a result of a restriction requirement, require all the limitations of an allowable claim, due to applicant's amendments to independent claims 63, 84 and 85. Pursuant to the procedures set forth in MPEP § 821.04(a), **the restriction requirement between inventions I and II, i.e. claims 63-84 and 85-90, respectively, as set forth in the Office action mailed on March 21, 2006, is hereby withdrawn** and claims 85-90 are hereby rejoined and fully examined for patentability under 37 CFR 1.104. In view of the withdrawal of the restriction requirement, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a

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claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest a retainer band adapted and configured to prevent bone anchor back-out, the retainer band being positioned within at least one of the bores and being confined between the top side and the bottom side of the spinal the plate, the retainer band having an initial position where at least a first portion of the length of the retainer band extends across a first portion of the respective bore, a passage position wherein the head of the bone anchor which is being inserted into the respective bore has deflected the retainer band transversely relative to the respective bore up to a sufficient distance to accommodate passage of the head of the respective the bone anchor past the retainer band as the bone the anchor is being driven to secure the plate to a respective such vertebra, and a retention position where such at least a first portion of the length of the retainer band again generally extends across such first portion of the respective bore and thereby is located proximal, and over, the respective bone anchor to, wherein the retainer band has a closed end portion which is stabilized relative to the

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top side and the bottom side of the spinal plate and has generally straight portions extending from the closed end portion and across at least a portion of the respective bore, as set forth in claim 63.

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest a retainer band defining first and second end portions generally directed toward the first and second ends of the spinal plate, the retainer band being adapted and configured to prevent bone anchor back-out, and being positioned within at least one of the bores, a bore portion of the length of the retainer band extending, at an initial position, into and across a respective bore, at least a portion of the bore portion of the retainer band deviating from parallelism with an inwardly-facing side of the respective bore, at least one portion of the retainer band, between the first and second end portions of the retainer band, being resiliently deflectable in a direction transversely away from the respective bore, from an initial position to a passage position, thereby to enable a head of a bone anchor to move into the bore and past the retainer band, the retainer band being biased thereby to return toward the initial position after the head of the bone anchor has moved past the bore portion of the retainer band, whereby the retainer band extends across a portion of the respective bore and blocks back-out of the bone anchor, as set forth in claim 84.

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest a retainer band in the channel, the retainer band having a length, a

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width, and a height, a first portion of the length of the retainer band extending at a first locus, across the projected outer perimeter and into the body, of at least one of the bone-fastener-receiving apertures, from the first locus, across a portion of the aperture body, and at a second locus, displaced from the first locus, back across the projected outer perimeter and off the body of the respective bone-fastener-receiving aperture and from the second locus, an entirety of the width of a second portion of the length of the retainer band extends into the channel in the spinal plate such that material of the spinal plate is disposed between the top surface of the spinal plate and the entirety of the width of the second portion of the length of the retainer band, as set forth in claim 85.

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest a retainer band having a length, and being adapted and configured to prevent bone anchor back-out, the retainer band extending across at least one of the bone-fastener-receiving aperture, the retainer band having an initial position where at least a first generally straight-line portion of an inwardly-directed edge of the retainer band extends across a first portion of the respective bone-fastener-receiving aperture in a straight-line direction which is generally in common with a portion of the top surface of the plate, a passage position where the head of the bone anchor which is being inserted into the respective bone-fastener-receiving aperture has deflected the retainer band transversely relative to the respective bore up to a sufficient distance to accommodate passage of the head of the respective the bone anchor past the retainer band as the bone anchor is being driven to secure the plate to a respective such vertebra, and a

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retention position where such at least a first portion of the length of the retainer band again generally extends across such first portion of the respective bone-fastener-receiving aperture and thereby is located proximal, and over, a top surface of the head of the respective bone anchor, as set forth in claim 119.

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest a retainer band adapted and configured to prevent bone anchor back-out, the retainer band being positioned within at least one of the bores, the retainer band having first and second ends facing away from each other, and having an initial position where at least a first portion of the retainer band extends across a first portion of a respective bone-fastener-receiving aperture, a passage position wherein the head of a the bone fastener which is being inserted into the respective bone-fastener-receiving aperture has deflected the retainer band transversely relative to the respective bone-fastener-receiving aperture up to a sufficient distance to accommodate passage of the head of the respective the bone fastener past the retainer band as the bone fastener is being driven to secure the plate to a respective such vertebra, and a retention position where such at least a first portion of the retainer band again generally extends across such first portion of the respective bone-fastener-receiving aperture and thereby is located proximal, and over, the respective bone fastener, as set forth in claim 131.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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